

INTERNAL REVENUE SERVICE  
District Director

Department of the Treasury

Date: JUN 16 1999

Employer Identification Number:

Case Number:

Person to Contact/Badge Number:

Contact Telephone Number:

Refer Reply To:

Dear Applicant:

We have considered your application for exemption from Federal income tax as an organization described under section 501(c)(3) of the Internal Revenue Code.

FACTS:

The information submitted discloses that you were incorporated on [REDACTED] for charitable purposes. The specific purposes for which you are organized are to provide [REDACTED] education, research and support services.

[REDACTED] provides research, training, support, and certification to [REDACTED] practitioners and the general public, with a specific emphasis on [REDACTED]. You prepare, coordinate, and present [REDACTED] continuing education seminars to State and locally licensed [REDACTED]. These seminars and workshops are conducted by your staff at [REDACTED] throughout the country. You provide [REDACTED] certification. This certification provides the general public with a quality assurance program for [REDACTED]. The certification covers general to advanced practitioners and assistance to senior trainers. The credentials allow [REDACTED] certified practitioners the use of the [REDACTED] name, referral listings, a newsletter subscription, and product and workshop discounts for a \$ [REDACTED] annual fee. You develop continuing education materials by developing curricula, books, videos and audio programs for use in seminars and independent study. You sell [REDACTED] to practitioners and the general public at or below retail prices. You maintain a referral register of certified practitioners, publish a quarterly newsletter for practitioners, and plan to sponsor an annual conference.

[REDACTED] is not a membership organization. You solicit participation in your continuing education seminars and workshops through direct mail, advertising, and local promotion by [REDACTED] sponsoring workshops. Seminar and workshop fees are determined by prevailing industry rates. Proprietary support materials are included as part of workshop fees and are provided at wholesale to schools, and sold at retail to the general

[REDACTED]

public. Pricing is determined by cost to produce and sale price of similar professional materials. Annual certification fees are determined by cost to [REDACTED]. You also distribute a catalog of professional equipment and support materials at seminars, through direct mail, and upon request. You have a [REDACTED] who oversees the granting of licenses to other groups interested in using the [REDACTED] name, logo, or proprietary materials.

Your income is derived from continuing education seminar fees, sales of continuing education materials, sales of [REDACTED] certification fees, annual conference fees and royalties for the use of the [REDACTED] name. Your expenses include salaries, rent, workshop, conference & seminar expenses, cost of sales, returns and allowances, bad debts, printing and reproduction, postage and delivery, telecommunications, and other necessary office and administrative expenses.

ISSUE:

Does the organization qualify for exemption from Federal income tax as an educational organization described under section 501(c)(3)? Can the organization qualify under any other section under 501(c) of the Internal Revenue Code?

LAW:

Section 501(c)(3) of the Internal Revenue Code describes certain organizations exempt from income tax under section 501(a), and reads in part as follows:

"Corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests



such as designated individuals, the creator or the family, shareholders of the organization, or persons controlled directly or indirectly, by such private interests.

Section 1.501(a)-1(c) of the Income Tax Regulations defines "private shareholders or individuals" as an individual having personal and private interest in the activity of the corporation.

Section 513 of the Internal Revenue Code defines a trade or business as "...any trade or business the conduct of which is not substantially related (aside from the need of such for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501..."

Trade or business has the same meaning for the purpose of determining whether a particular expense is a deductible trade or business expense under Internal Revenue code section 162 and includes any activity carried on for the production of income from the sale of goods or in the performance of services. An activity does not lose identity as a trade or business merely because it's carried on within a larger aggregate of similar activities or within larger complex of other endeavors which may or may not be related to the exempt purpose. See Income Tax Regulations 1.513-1(b).

In *Better Business Bureau v. U.S.*, 326 U.S. 279 (1945), Ct. D. 1650, C.B. 1945, 375, the Court considered the qualification for exemption as a charitable organization. The organization had a substantial purpose of serving the mutual welfare, protection and improvement of business methods among its member merchants. Therefore, despite certain educational purposes, the organization did not qualify for exemption under section 501(c)(3). Moreover, it has been held that the presence of a single noncharitable or noneducational purpose, if substantial in nature, will preclude exemption under section 501(c)(3) regardless of the number or importance of truly charitable or educational purposes.

In *Federation Pharmacy Services, Inc., v. Commissioner*, (1979), 72 T.C. 687, and *B.S.W. Group, Inc. v. Commissioner* (1978) 70 T.C. 352, the courts stated that the selling of goods at a discount and providing services at cost lacks the donative element necessary to establish exemption under section 501(c)(3). They were therefore operated for a commercial purpose and in direct competition with commercial businesses.

Revenue Ruling 60-351, 1960-2 CB 169, held that an organization that publishes a foreign language magazine containing fiction, poetry, book reviews, and articles of literary, scientific and educational character, was not exempt under section 501(c)(3). Although the magazine is printed in a foreign language and may provide some materials unlike those in other magazines, there is no showing that the operations fulfill a corporate role which in and of itself is exclusively charitable, scientific, literary or educational. The mere fact that the corporation is not organized for profit does not entitle it to exempt status.

[REDACTED]

### ANALYSIS:

The [REDACTED] was developed by [REDACTED] of your corporation and the developer of the [REDACTED]. Although the [REDACTED] is no longer manufactured, you do promote the sale of the [REDACTED] and accessories at a discount price and further discounted through participation in any of your workshops. You provide a technique workshop and a marketing workshop. The technique workshop is basically a "how to" presentation and demonstration on [REDACTED]. Included is an audio and practice tape, a 2 hour workshop review video, and a 75 page manual and studyguide. The marketing workshop provides participants with marketing skills that will help them in promoting their [REDACTED]. Included is a [REDACTED] page book prepared by [REDACTED], as well as an addenda packet of sample contracts, proposals, brochures, screening and evaluation forms, and media articles about [REDACTED]. The workshops are designed for [REDACTED] or current students in recognized [REDACTED]. Knowledge of basic anatomical terms and [REDACTED] is required.

You stated that you have no patented products sold by [REDACTED]. However, you have filed and are awaiting trademark approval on the [REDACTED]. You did not provide a response to a question addressed in our inquiry in which we asked if anyone receives any royalties for the use of the [REDACTED].

### CONCLUSION:

The manner in which your activities are conducted is no different from those conducted by an organization operated for profit. As in any business, you are promoting a product which is the [REDACTED] developed by [REDACTED]. This provides a direct benefit to [REDACTED]. The manner in which your services and products are provided is commercial in nature. Workshop fees are prevailing industry rates, and although support materials are discounted through your workshops, they are sold wholesale to schools, and retail to the general public. In addition, since all your services and products are specifically designed for [REDACTED] or students in recognized [REDACTED], these individuals also benefit since it enables them to further their own [REDACTED]. Any benefit to the public is incidental.

Accordingly, based on the information submitted, it is held that you are not operated for one or more exempt purposes under section 501(c)(3) of the Internal Revenue Code.

We have also considered whether you would qualify for exemption under any other section under 501(c) and have determined that you would not meet the qualifications under any other section of the Code since you are primarily operating a business.

If you are in agreement with this proposed determination, we request that you sign and return the enclosed agreement, Form 6018 (Consent to Proposed Adverse Action). Please



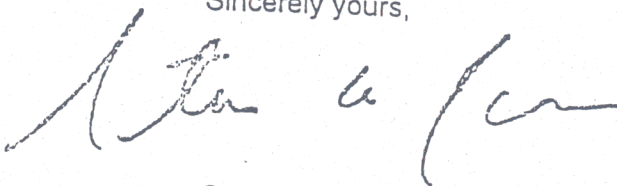
note the instructions for signing on the reverse side of the form.

If you do not agree with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information to support your position, as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a hearing. The hearing may be held at the office of Regional Director of Appeals or, if you request, at a mutually convenient District office. A self-addressed envelope is enclosed.

If you do not appeal this proposed determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination on this matter. Further, if you do not appeal this determination within the time period, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. This section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has remedies. Section 7428(b)(2) of the Code provides, in part, that "A declaratory judgment or decree under exhausted administrative remedies available to it within the Internal Revenue Service".

If you have any questions, please contact the person whose name and telephone number are shown on the heading of this letter.

Sincerely yours,



Steven A. Jensen  
District Director

Enclosure:  
Publication 892  
Form 6018  
Envelope